

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

NORMAN EVANS MCELROY, JR.

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CR. NO. 2:07-cr-104-WKW

United States's Unopposed Motion to Continue Trial

The United States respectfully requests the Court to continue the case against Defendant Norman Evans McElroy, Jr., until the Court's next trial term. McElroy does not oppose this request. It requests this relief for the following reasons:

1. On May 9, 2007, McElroy was charged in a four-count Indictment consisting of two counts of receipt or distribution of child pornography and two counts of possession of child pornography. Much of the evidence in this case involves complex technical issues with computers, networks, and file-sharing programs. In preparation to deal with these issues, the United States had forensic evidence analyzed by the FBI forensic laboratory in Pocatello, Idaho.

2. Additionally, to deal with other technical issues, to prepare for trial presentation of computer evidence, and to answer other computer-related questions, the United States has relied on consulting expert Barbara Wardriski from the FBI Mobile Field Office. Within the last two and one-half weeks, Ms. Wardriski was to ordered to an unexpected assignment to assist with technical and computer-related issues in support of FBI

counter-terrorism in Iraq. Ms. Wardriski is currently in Iraq and will be on assignment until the beginning of October.

3. Because of Ms. Wardriski's prior dealings and knowledge about the technical issues with this case, and because of the few number of similarly-trained personnel available in the state of Alabama, it would be extremely difficult and impractical to obtain another person to assist the United States in trial preparation and the presentation of computer evidence to the jury. Therefore, the United States requests a continuance of the case until the Court's next trial term.

4. On January 10, 2008, McElroy moved to suppress a variety of statements and evidence in this case. The hearing, held in February, 2008, lasted the entire day. On July 24, 2008, Magistrate Judge Susan Russ Walker issued an eleven-page R&R recommending that McElroy's motion be denied. Yesterday, July 28, 2008, McElroy, through counsel, indicated in a pretrial conference in this case that he is planning to file objections to the R&R. Therefore, the United States additionally requests a continuance so that it may file an adequate response and so that the Court may have sufficient time to perform a *de novo* review of the Magistrate's R&R.

5. Normally, the grant of a continuance is left to the sound discretion of the trial judge;¹ however, the Court is limited by the requirements of the Speedy Trial Act.² The United States, therefore, requests that this case be continued for at least two reasons, each of which is authorized by the Speedy Trial Act.

¹ *United States v. Stilzer*, 785 F.2d 1506, 1516 (11th Cir. 1986).

² 18 U.S.C. § 3161.

6. First, the case should be continued, and the days excluded from the Speedy Trial calculation because of the complexity of the case, which would be impracticably complex for the parties and the court if the United States was required to prosecute the case without its consulting computer expert, Ms. Wordiski.³ As a result, “the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.”⁴ Second, the case should be continued to provide the court with adequate time to consider McElroy’s upcoming objections to the Magistrate’s R&R. The “delay resulting from [McElroy’s] motion”⁵ and its objections are also excluded under the Speedy Trial Act.

Because both the ends of justice are best served with a continuance and the calculation is otherwise excluded from the Speedy Trial calculation, the Government respectfully requests that the Court continue this case to the Court’s next trial term.

Respectfully submitted this 29th day of July, 2008,

LEURA G. CANARY
UNITED STATES ATTORNEY

/s/ Christopher Snyder
CHRISTOPHER A. SNYDER
Assistant United States Attorney
131 Clayton Street
Montgomery, AL 36104
Phone: (334) 223-7280
Fax: (334) 223-7135
E-mail: christopher.a.snyder@usdoj.gov

³ *Id.* § 3161(h)(8)(B)(ii).

⁴ *Id.* § 3161(h)(8)(A).

⁵ *Id.* § 3161(h)(1)(F).

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2008, I electronically filed the foregoing with the Clerk of Court, using the CM/ECF system, which will send notification of such filing to Christine Freeman, Esq.

/s/ Christopher Snyder
CHRISTOPHER A. SNYDER
Assistant United States Attorney